S.B. Civil Misc. Appeal No.1430/2006

Mohan Lal.
vs.
Vikram Kumar Vaishnav & anr.

Date : 12.10.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. AK Acharya, for the appellant.

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Heard learned counsel for the appellant.

Though the appeal has been admitted by the Registrar (Administration) by order dated 4.10.2006 but it appears that the appeal has been admitted only because of the reason that the present appeal is against the order and against which appeal can be admitted by the Registrar (Administration).

The present appeal is against the order dated 12.7.2006 as given in the cause title of the appeal. However, in the prayer clause, the appellant sought quashing of the orders dated 12.7.2006 and 2.8.2006.

It appears from the order dated 4.7.2006 that an application has been filed by the objector Mohan Lal under Section 151 CPC wherein he sought stay of the execution because of pendency of objection petition no.78/2005. It was contended by the objector that in case, the execution

is stayed, then there will be no difficulty even to the decree holder as no second notice for auction will be required to be issued. It was submitted that the next date in the objection petition is 11.7.2006. Said contention of the objector was accepted by the Court vide order dated 4.7.2006 and the executing court stayed the execution proceedings till 11.7.2006 and ordered that the file may be placed along with the objection petition on 11.7.2006.

It is strange that when the entire relief has been granted by the order dated 4.7.2006, how the appellant has preferred this appeal. The order dated 2.8.2006 is order of staying the execution proceedings on payment of 50% of the amount which may be deposited under protest. That order was made effective upto 3.8.2006. Thereafter, further orders dated 3.8.2006 and 7.8.2006 have been passed. The order of stay of execution proceedings on condition is not an order appealable.

In view of the above, the one appeal against both the orders dated 12.7.2006 and 2.8.2006 is misconceived and hence, dismissed.

(PRAKASH TATIA), J.

S.Phophaliya